

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 OREGON ADVOCACY CENTER,)
4 METROPOLITAN PUBLIC DEFENDERS)
5 INCORPORATED, and A.J. MADISON,))
6 Plaintiffs,) Case No. 3:02-cv-00339-MO
7 v.) (Lead Case)
8 PATRICK ALLEN, et al.,) October 25, 2022
9 Defendants.) Portland, Oregon
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15 **Telephonic Oral Argument**

16 **TRANSCRIPT OF PROCEEDINGS**

17 BEFORE THE HONORABLE MICHAEL W. MOSMAN

18 UNITED STATES DISTRICT COURT CHIEF JUDGE

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(P R O C E E D I N G S)

(October 25, 2022; 1:35 p.m.)

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THE COURTROOM DEPUTY: We are here this morning for oral argument in Case No. 3:02-cv-339-MO, Oregon Advocacy Center, et al. versus Mink, et al.

Counsel, please state your name for the record, beginning with plaintiffs, defendants, and other parties.

MR. MERRITHEW: Good morning. This is Jesse Merrithew representing Metropolitan Public Defenders.

MS. COOPER: Good morning, Your Honor. This is Emily Cooper representing Plaintiff Disability Rights Oregon.

MS. SCOTT: Good morning. This is Carla Scott from the Department of Justice for defendants.

MS. POTTER: Good morning, this is Sheila Potter, also for defendants.

MR. GARZA: Good morning. This is Keith Garza for proposed judge intervenors Audrey Broyles, Matthew Donohue, Jonathan Hill, Kathleen Proctor, and Nan Waller.

MR. CARR: Good morning, Your Honor. This is Thomas Carr, Washington County Counsel for amicus Washington County.

MR. NEIMAN: And I apologize for talking over counsel, Your Honor. This is Eric Neiman for intervenor health systems.

MR. WILLIAMS: Your Honor, Billy Williams on behalf

1 of amicus curiae district attorneys.

2 MS. VETTO: Good morning, Your Honor. Jane Vetto,
3 Marion County.

4 THE COURT: Am I missing anyone?

5 Thank you all for being here today. We're here on
6 principally the judges' motion to intervene to reconsider my
7 earlier ruling on intervention. But while I have you all here,
8 it might be useful to take up this issue in a way that moots
9 the motion to intervene, because while it has some strength,
10 there are issues about, I'll say, representation -- not lawyer
11 representation, but meeting the requirements to be here as
12 judges for an issue that concerns judges.

13 So rather than pick that up first, here's where I
14 think the parties are headed in my own tentative views on that.
15 It seems that the real question being asked here is what is the
16 effect of the September 1st comprehensive order on the earlier
17 August 16th injunction and preliminary order. That is, it
18 contained both a piece involving an injunction and a piece
19 involving procedures that was picked up later in the September
20 1st order.

21 And so a couple things seem obvious to me, and it's
22 been helpful to think about them brought up by this motion. I
23 think things may be clearer when the hearing is over today.
24 But first of all, it seems obvious, of course, that the
25 September 1st order, the comprehensive order is now the

1 governing law regarding the activities of OHA and other related
2 entities on the questions raised by the order itself. And to
3 that degree, the September 1st order subsumes the procedural
4 aspects of the August 16th order. And by "subsumes," I mean
5 that the same rules are picked up somewhat in the September 1st
6 order, and anything in the August 16th order that's
7 inconsistent with the September 1st order or different in any
8 way has been erased by the September 1st order.

9 And, similarly, it now seems that now OHA has a
10 comprehensive order that it must follow, I think it's widely
11 understood by all relevant parties and entities that they can't
12 be held in contempt for obeying that September -- excuse me --
13 September 1st order, and therefore there's no further need for
14 the injunction; that it ought to be dissolved.

15 So unless someone disagrees with those three ideas,
16 that first that the September 1st order is now the governing
17 order; second, that the procedural aspects of the August 16th
18 order are erased by the September 1st order; and third, that
19 there's no further need for the injunction, given the governing
20 aspect of the September 1st order, unless anybody disagrees
21 with one of those three propositions, then I don't need to
22 resolve the motion to intervene, I'm just going to formally
23 dissolve the August 16th order.

24 So I'll start first with counsel for the judges.

25 MR. GARZA: Your Honor, we agree with all three

1 propositions.

2 THE COURT: How about counsel for Oregon Advocacy
3 Center?

4 MS. COOPER: We agree, Your Honor.

5 THE COURT: For Metro PD?

6 MR. MERRITHEW: We agree as well, Your Honor.

7 THE COURT: Ms. Scott or Ms. Potter?

8 MS. SCOTT: We agree, Your Honor.

9 THE COURT: All right. Then having hit those high
10 spots, anyone else disagree with any of those three principles
11 I've just outlined?

12 (No response.)

13 THE COURT: All right. Then let me --

14 MR. NEIMAN: It's Eric Neiman, Your Honor. As of
15 today, I agree with the three propositions the Court has put
16 forward. On November 21st, we're going to be talking again
17 about the September 1st order?

18 THE COURT: That's right.

19 All right. Anyone else?

20 Then my formal ruling is because the September 1st
21 order is comprehensive and subsumes any earlier order, and
22 because it imposes legal requirements on OHA for obedience to
23 which OHA or its actors, individual actors cannot be held in
24 contempt, nor is there any threat of such, I formally dissolve
25 the August 16th order both in its injunctive aspect and in its

1 procedural aspect.

2 So we have a hearing coming up in November, and part
3 of that hearing was to pick up the merits. So today was really
4 supposed to just be about a motion to intervene, but part of it
5 was to pick up the merits of the injunctive order, and that's,
6 of course, off the table.

7 Of course, I understand both the judges and the
8 healthcare litigants to still be interested on the 21st of
9 November in arguing the substantive aspect of the September 1st
10 order. Am I right about that for those two entities, the
11 judges and the healthcare entities?

12 MR. GARZA: Keith Garza for the judges, Your Honor.
13 Yes, we are still interested.

14 MR. NEIMAN: And Eric Neiman for the health systems.
15 We are, too.

16 THE COURT: All right. And then the health systems,
17 just so I know what's on the table, the health systems have a
18 separate lawsuit; is that right?

19 MR. NEIMAN: Correct.

20 THE COURT: And that's been currently assigned to
21 Judge McShane?

22 MR. NEIMAN: Yes.

23 THE COURT: All right. And has there been -- I'm not
24 intending to rule on this today at all, I just want to know
25 what's out there. Has there been a motion to consolidate it?

1 I thought I'd heard something like that. Has there been an
2 actual motion to consolidate it?

3 MR. NEIMAN: Yes.

4 MS. SCOTT: Yes, Your Honor. The State has filed a
5 motion to consolidate a new health systems case with Mink and
6 Bowman. The health systems oppose, but the plaintiffs in Mink
7 and Bowman do not.

8 THE COURT: All right. So that will be litigated in
9 front of the judge who has that case, Judge McShane. He'll
10 make a decision about that motion and we'll see where it goes.

11 Anything else we can resolve today? I'll start with
12 counsel for Oregon Advocacy.

13 MS. COOPER: No, Your Honor.

14 THE COURT: Mr. Merrithew?

15 MR. MERRITHEW: No, Your Honor.

16 THE COURT: Ms. Scott, Ms. Potter, anything further?

17 MS. SCOTT: No, Your Honor.

18 THE COURT: For any of the potential or actual
19 amicus, anything further?

20 UNIDENTIFIED MALE SPEAKER: No, Your Honor.

21 THE COURT: All right. Thank you all. We'll be in
22 recess.

23 (Proceedings concluded at 9:19 a.m.)

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5 I certify, by signing below, that the foregoing is a
6 correct transcript of the record of proceedings in the
7 above-entitled cause. A transcript without an original
8 signature or conformed signature is not certified.

9
10 */s/Bonita J. Shumway*

November 1, 2022

11 BONITA J. SHUMWAY, CSR, RMR, CRR
12 Official Court Reporter

13 DATE

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{PLAINTIFF} v.
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